United Nations E/C.19/2010/12/Add.2

Economic and Social Council

Distr.: General
5 February 2010
English
Original: Spanish

Permanent Forum on Indigenous Issues
Ninth session
New York, 19-30 April 2010
Items 3 and 4 (a) of the provisional agenda*

Discussion on the special theme for the year, "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples"

Human rights: Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Information received from Governments

Paraguay

Summary

The present report contains the responses of the Government of Paraguay to the questionnaire sent to Member States regarding the recommendations of the Permanent Forum on Indigenous Issues at its eighth session. The responses of the Government of Paraguay take into account the recommendations of the Permanent Forum's mission to Paraguay in 2009.

* E/C.19/2010/1.

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Responses of Paraguay to the questionnaire from the Permanent Forum on Indigenous Issues

I. Responses to questions 1 and 2

A. The right of peoples to self-determination

1. The Government of Paraguay is making every effort to ensure the right of indigenous peoples to self-determination, as enshrined in articles 3 and 4 of the United Nations Declaration on the Rights of Indigenous Peoples. Thus, chapter V of the National Constitution fully recognizes indigenous peoples as groups that existed prior to the establishment of the Paraguayan State and grants them the right to participate in national life in accordance with their customary practices.

2. Paraguay ratified by Act No. 234 of 1993 the Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169) of the International Labour Organization (ILO) and, accordingly, has begun to promote, as a matter of good practice, the right of peoples to participation, on the basis of their genuine and legitimate organization and representation. Paraguay is also studying appropriate mechanisms to comply with the State's advisory duty with regard to any undertaking or initiative relating to the life of indigenous peoples.

3. There are a number of new initiatives currently under way in Paraguay to organize the efforts of indigenous peoples their right to exercise self-determination. Examples of such initiatives are the Coordinadora por la Autodeterminación de los Pueblos Indígenas (Coordinating body for the self-determination of indigenous peoples (CAPI)); the Unión de Nacionalidades Ayoreo del Paraguay (Ayoreo Union of Paraguay (UNAP)); the Asociación de Comunidades Indígenas de Itapúa (Association of indigenous communities of Itapúa (ACIDI)); the Federación Nativa Aché del Paraguay (Aché Federation of Paraguay (FENAP)); the Federación de Asociaciones de Comunidades Guaraníes (Federation of Guaraní community associations), which brings together the Guaraní peoples of Paraguay; and the Asociación de Comunidades Indígenas (Association of Indigenous Communities (ACISPE)) of San Pedro. All these bodies and their civil rights are legally recognized, and they exercise their right to self-determination completely independently from the State, at both the national and the international levels.

B. Identity of indigenous peoples

4. The Instituto Paraguayo del Indígena (Paraguayan Institute for Indigenous Affairs (INDI)) maintains a regularly updated National Register of Indigenous Communities, which comprises a detailed list of significant data, such as recognition of the legal personality of indigenous communities, population, recognized leaders, land situation, surface area, and other data that is closely linked to the identity of indigenous peoples. In addition, ongoing and periodic work is carried out to enter indigenous children into the Civil Registry and to provide all indigenous individuals with an identity card. INDI is also issuing special ethnic identity cards. These tasks are performed by civil servants from the Civil Registry Department and the Identification Department of the National Police.

C. Cultural identity

5. INDI has an Indigenous Culture Unit, which works in conjunction with the Ministry of Culture on issues such as language and the production and advancement of indigenous art, recognizing that indigenous cultures are a rich source of cultural diversity. It should be noted that article 140 of the Constitution of Paraguay provides that Paraguay is a multicultural and bilingual country, the official languages being Spanish and Guaraní. With regard to indigenous education, the Constitution provides that indigenous children must receive their initial schooling in their mother tongue and may choose Spanish or Guaraní as their second language. In 2007, Act No. 3231 was promulgated, establishing the Department of Indigenous School Education. Some 70 per cent of school teachers are indigenous; these teachers have created the Indigenous Teachers' Association in order to best capitalize on their training and fulfil their educational responsibilities.

D. Good practices relating to the ethno-development of the peoples

6. INDI recognizes that in order to meet the demands of indigenous communities, it must incorporate a development angle into its activities. A few years ago, in consultation with the communities and with the assistance of multilateral bodies, it began to manage support for small development projects. Currently, the main activities of INDI include two projects, which are being carried out in consultation with the beneficiary communities.

(a) Project for support to indigenous communities in the Department of Alto Paraguay: Financed by a grant from the Andean Development Corporation (CAF), this project benefits 18 communities of the Ayoreo, Maskoy and Ishyr ethnic groups, with a total of 1,177 families. As decided by the indigenous families, the project includes agricultural and stock breeding activities, and supplies tools, seed and infrastructure. The activities are participatory in that they involve all family members. As a result, indigenous families should be self-sustaining after a few months, within a framework of sustainable environmental management;

(b) Project for the regularization of indigenous lands funded by Japan, under the supervision of the World Bank: This project, which began three years ago, benefits 11 indigenous communities in Caaguazú and 12 indigenous communities in Boquerón, Chaco. Within the framework of the project, a substantial sum was transferred to the selected communities in the form of a direct donation. The use of the donation is being determined on the basis of decisions adopted by the communities. A key feature of this project is that it promotes the regularization of community lands through the issuance of deeds;

(c) Development projects of other State institutions: INDI is aware that other State institutions, such as the Ministry of Agriculture and the Ministry of Social Welfare, are carrying out development projects that benefit indigenous communities.

II. Response to question 3

A. Legalization of community land

7. The demands of indigenous peoples focus primarily on the recognition and return of their ancestral lands. So far, Paraguay has been able to meet about 65 per cent of these demands through the award of deeds to indigenous communities. INDI has a register of communities listing 540 indigenous communities.

8. The fact that much of the land claimed by indigenous peoples is held by private owners makes this task quite difficult, as there are currently only two mechanisms for dealing with such lands: expropriation for reasons of public interest, and purchase.

9. It should be noted that expropriation is a constitutional power held exclusively by the National Congress. For several years now, the Congress has refused to carry out expropriations. For example, in a recent case involving the Yakye Axa indigenous community of the Enxet people, despite a ruling by the Inter-American Court of Human Rights in favour of restoring the ancestral lands to the community, the Senate refused to authorize the expropriation requested by the Executive branch and the indigenous community. That decision was taken in 2009. Other indigenous communities such as Sawhoyamaxa and Xamok Kasek have met the same fate in the past.

10. Land purchases are carried out directly by INDI on the basis of claims, legal proceedings and, lastly, negotiation with private owners. In 2009, INDI disbursed an amount of 19 billion guaranies for the acquisition of land. This amount is appropriated through the national budget. The same amount has been appropriated to INDI for 2010, and it has therefore begun the process of establishing selection criteria for the beneficiary communities in 2010.

B. Increased reliance on large-scale production and the use of agricultural chemicals

11. The difficult situation of indigenous land is compounded by a deterioration in the quality of the land and the quality of life of the communities, resulting from an increase in the large-scale production of soy and wheat in the areas surrounding the communities. This situation has created problems regarding the use of agricultural chemicals by farmers, often in violation of protective legislation, which affect the health of children and adults, according to complaints by the indigenous communities. Legal proceedings have been initiated on some of these complaints, such as that filed with regard to the Avá-Guarani and Mbyá-Guarani communities of Itakyry. INDI is supporting legal action in defence of the affected communities owing to serious concerns about the inappropriate use of pesticides, particularly with respect to non-compliance with environmental laws.

12. These situations have an impact on the human rights of indigenous peoples and their resolution is beyond the authority of the Executive branch, given that legal disputes are under the jurisdiction of the Public Prosecutor's Office and the judges. Another subject of debate is the adoption of a law on the use of agricultural

chemicals, the process of which has been obstructed by strong pressure from farmers.

III. Response to question 4

13. Indigenous issues are one of the priorities of the human rights programme proposed by the Executive branch; the executive authorities are therefore trying to ensure the implementation of the recommendations and meet the needs of this population.

IV. Response to question 5

A. Laws and decrees concerning indigenous peoples

14. Paraguay's laws and decrees concerning indigenous peoples, are listed below:

- The Constitution of Paraguay, part I, title II, chapter V, on indigenous peoples
- Act No. 234/93, ratifying International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries
- Act No. 904/81, Statute of Indigenous Communities, as amended by Act No. 919/1996 and Act No. 2199/2003
- Act No. 3231/2007 establishing the Department of Indigenous School Education
- Education Act No. 1264/98
- Act No. 352/93 concerning protected wilderness areas
- Act No. 446 concerning governorates
- Act No. 375/56, as amended by Act 98/82, on social security and the social service administration
- Act No. 253/71 establishing the National Professional Advancemeat Service
- Act No. 1863/2002 establishing the Agrarian Statute
- Act No. 1286/1998, Code of Criminal Procedure
- Act No. 3232/2007 concerning credit assistance to indigenous communities
- Act No. 3733/2009 allocating 1 per cent of scholarships for higher education to the indigenous sector

B. Presidential decrees: 2008 and 2009

15. In 2008 and 2009, several decrees were adopted concerning indigenous peoples, including:

- Decree No. 1945/2009, establishing the national programme for indigenous peoples (PRONAPI), coordinated by the Paraguayan Institute for Indigenous Affairs (INDI)

- Decree No. 2789/2009 establishing the national programme for food and nutritional sovereignty and security (PLANAL)
- Decree No. 2290/2009 establishing the human rights network of the Executive branch
- Decree No. 1595/2009, establishing an inter-agency commission for the enforcement of judgments of the Inter-American Court of Human Rights and the recommendations of the Inter-American Commission on Human Rights

16. The indigenous peoples are a main focus of the Government of Paraguay. By decree No. 1945, of 30 April 2009, the Executive branch established the national programme for indigenous peoples (PRONAPI) under the Ministry of Social Welfare, in liaison with various ministries and specialized bodies, in order to respond to the most pressing needs, such as food security and the health of members of the indigenous communities. As such, PRONAPI, coordinated by INDI, responds to the needs of the indigenous peoples of Paraguay as a whole in a coordinated manner that is consistent with the functions of its constituent bodies.

17. Phase I was launched at the same time. It deals essentially with the most pressing needs, such as the provision of food, through actions taken with the concerned institutions, which has made it possible to meet the nutritional needs of indigenous families. Under phase II efforts will be made to achieve solutions that are more substantial in terms of action that is more sustainable.

18. With the support of the Food and Agriculture Organization of the United Nations (FAO), a national food programme PLANAL was established that includes a special module for indigenous peoples.

19. The national decent work programme, signed by the President of the Republic and the Director of the ILO Subregional Office on 23 February 2009, expressly refers to the advancement and implementation of basic labour rights and the eradication of forced labour.

20. ILO working paper No. 45, on debt bondage and marginalization in the Chaco region of Paraguay, which was drafted by the Special Action Programme to Combat Forced Labour, has served as the basis of a harmonized vision by social actors concerning forced labour and the indigenous peoples.

21. On 27 May 2009, pursuant to decision No. 230 of the Ministry of Justice and Labour, the Commission on basic labour rights and the prevention of forced labour was established. It comprises representatives of the ministries and secretariats of the Executive branch, the Supreme Court of Justice, employers and workers, INDI and other institutions.

22. In the first quarter of 2009, three seminars were conducted on forced labour and the implementation of ILO Convention No. 169. The first seminar was conducted at the headquarters of the National Congress, the second, at the Commission on basic labour rights and the prevention of forced labour, and the third, for the first time in the country's history, in the Chaco region of Paraguay, with the participation of ministerial and local authorities, ILO experts, indigenous leaders, and representatives of the public and private sectors and of civil society.

23. The Commission established pursuant to decision No. 230/09 of the Ministry of Justice and Labour drafted a plan of action to combat forced labour. As part of the

plan of action, an investigation on the labour situation of indigenous women in Paraguay is being finalized.

24. At the same time, a comprehensive publicity programme is being developed on the ILO Conventions concerning forced labour (Nos. 29 and 105) and No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, to be broadcast by a high frequency radio station (Radio Pa'i Puku) located in the Chaco region.

25. The document "Fighting forced labour: the example of Brazil" has been widely disseminated, as has the recent document on forced labour, "The cost of coercion", issued by ILO for the ninety-eighth session of the International Labour Conference (2009).

26. On 21 September 2009, a session was organized jointly with ILO on the theme, basic labour rights and the prevention of forced labour, which was specially directed at employees in the rural sector. From 5 to 7 October 2009, a course for inspectors was held, which made special reference to the handbook on forced labour and human trafficking for labour inspectors published by the ILO Special Action Programme to Combat Forced Labour. In addition, a seminar was organized for judges, magistrates, prosecutors and defence counsels and also a seminar on indigenous women and the labour market, culminating in a second session, held in the Chaco region of Paraguay in the district of Teniente Irala Fernández on 8 and 9 October 2009.

27. The text of ILO Convention No. 169 is currently being printed in three languages (two indigenous languages and Spanish), and a reading guide to the Convention is in the process of being completed. Technical sessions on basic labour principles and rights were also scheduled, starting on 24 September 2009.

28. In February and May 2009, the Ministry of Justice and Labour, through its inspection and monitoring office, conducted two preventive inspection operations in the Chaco region on decent work in rural localities.

29. The Ministry of Justice and Labour, through the National Professional Advancement Service, has taken its training programme to the most remote areas of the Chaco region of Paraguay. The course participants (indigenous members of the Guarani Nandeva group of the Department of Boquerón) received their training certificate in hydro-sanitary and diesel motor pump maintenance, enabling them to access better types of work and self-employment.

30. The Ministry of Justice and Labour signed an agreement with the Rural Association of Paraguay (ARP) to implement a joint project to regularize the situation of workers at livestock enterprises which are members of ARP in implementation of the labour and social security laws. An awareness-raising campaign for members and non-members of ARP is also under way.

31. Through a joint effort with United Nations agencies, a course on the topic, strengthening institutional arrangements for the implementation of public policies concerning indigenous peoples, was held at the office of the United Nations Development Programme, with the participation of ILO. The course was aimed at strengthening areas of technical assistance and public policies concerning indigenous peoples.

C. Instruments of national legislation for the administration of criminal justice concerning indigenous peoples

32. Paraguayan legislation envisages special treatment for indigenous peoples in the administration of justice, as set out in the Constitution and the Code of Criminal Procedure pursuant to the Constitution.

33. The Constitution confers upon the Public Prosecutor's Office specific duties and powers with regard to the indigenous peoples. In accordance with article 268, paragraph 2, it must promote public criminal proceedings in order to defend the public and social heritage, the environment and other broad interests, as well as the rights of indigenous peoples.

34. Part I, on fundamental principles, rights, duties and guarantees, chapter V, article 63, provides that [indigenous peoples] also have the right to freely apply their systems of political, social, economic, cultural and religious organization, and to voluntarily observe their customary norms within their own communities, provided that they do not violate the fundamental rights established by this Constitution. Indigenous customary law must be taken into account when dealing with conflicts of jurisdiction.

35. The Congress has ratified by force of law (Act No. 234/93) ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, which was adopted at the seventy-sixth ILO Conference held in Geneva on 27 June 1989.

36. Article 8, paragraphs 1 and 2, of the Convention states: "In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights".

37. Article 9, paragraph 1, of the Convention states: "To the extent compatible with the national legal system and internationally recognized human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected".

38. Article 10, paragraphs 1 and 2, states: "In imposing penalties laid down by general law on members of these peoples, account shall be taken of their economic, social and cultural characteristics. Preference shall be given to methods of punishment other than confinement in prison".

39. In addition, title VI of the Code of Criminal Procedure (Act No. 3440/08) stipulates the procedure for punishable acts relating to indigenous peoples. Its basic provisions include the following:

40. During the preparatory phase, the prosecutor's investigation must be carried out with the assistance of a technical consultant specializing in indigenous issues (art. 433, para. 1).

41. In the event that preventive detention is ordered, the judge may order an expert report on the living conditions of the jailed defendant that takes into account the cultural attributes of the defendant and, if applicable, makes recommendations with the aim of avoiding cultural alienation (art. 433, para. 2). Also, before ruling on any substantive matter, the judge must hear the opinion of an expert (art. 433, para. 3).

42. During the intermediate phase, the judge must summon the defendant and the victim, together with such members of the community as they may designate, to a hearing at the Public Prosecutor's Office, in order that they may mutually agree on some type of reparation, which may include any measure authorized by this Code, or measures accepted by the culture of the ethnic group in question, with the aim of bringing an end to the proceedings, provided that doing so does not violate the fundamental rights established by the Constitution and current international law (art. 434, para. 1).

V. Response to question 6

A. Paraguayan Institute for Indigenous Affairs — Restructuring

43. Article 28 of the Statute of Indigenous Communities (Act No. 904 of 1981) provides for the establishment of the Instituto Paraguayo del Indigena (Paraguayan Institute for Indigenous Affairs (INDI)):

> An independent government entity known as the Paraguayan Institute for Indigenous Affairs is hereby established, with legal personality and its own assets, for the purpose of the implementation of this Act; it shall be governed by the provisions of the Act and its rules.

44. Article 32 defines the functions of INDI, which include:

(a) Establishing and implementing policies and programmes, and

(b) Coordinating, inspecting and evaluating activities of the public and private sectors relating to indigenous matters.

45. Thus, INDI is the lead agency for indigenous policy in Paraguay; its mission is therefore extremely important and needs to be adapted to current needs within the framework of State reform.

46. In fulfilment of this mandate, INDI began an intensive reorganization effort in August 2009 with a view to making indigenous issues a higher priority within the structure of the State, in accordance with the needs of indigenous peoples.

47. The primary role of INDI is to secure the lands of indigenous communities. On that basis, three main areas of focus have been defined: territory, participation and development. Within this framework, INDI is focusing on an intensive strategic planning effort with the support of UNDP. As part of this effort, a goal for 2013 has been defined, namely that INDI needs to be governed by indigenous peoples' representatives. To that end, the issue of indigenous participation is being addressed with the utmost care, in view of past mistakes which seriously harmed indigenous peoples. The issue of participation is also sensitive because consensus needs to be reached among all indigenous peoples.

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D. Ethnic Rights Department of the Public Prosecutor's Office

48. In order to ensure effective implementation of existing regulations relating to ethnic rights and to protect these rights in the administration of justice, in 1993 the Ethnic Rights Unit was established, with just one person in charge. This Unit was upgraded institutionally and, in 1998, by decision No. 185/98, the Department of Indigenous Affairs (later renamed the Ethnic Rights Department) was established. At the beginning of 2002, by decision of the Office of the Attorney General, it lost the status of department, occasioning administrative, operational and structural consequences.

49. In July 2009, following the advent of a new administration, the Ethnic Rights Department was re-established by decision of the Office of the Attorney General. This Department is shown in the organizational structure of the Public Prosecutor's Office as part of the technical support office, along with other departments. The general objective of the Ethnic Rights Department is to collaborate at the technical level with public prosecutors to ensure the effective implementation of the special national and international norms that apply to indigenous matters. Thanks to the work of this Department, many inter- and intra-ethnic conflicts have been satisfactorily resolved through the implementation of indigenous customary law, thereby avoiding cultural alienation in penitentiary institutions.

50. In order to decentralize its functions and optimize the organization and operational capacity of its structure, the Ethnic Rights Department has two district offices: one in the eastern region and one in the western region, in addition to administrative staff who streamline operations. There is also an approved operations manual and an instruction guide issued by the Office of the Attorney General, which the complaints desk and public prosecutors must follow so that the Ethnic Rights Department can intervene immediately whenever members of indigenous communities are involved in a case to be investigated.

51. Since September 2009, the Ethnic Rights Department has had its own head office. The facilities have been substantially upgraded with better fixtures and technology. In addition, former staff have been reclassified, and new staff have been hired and brought on board, thereby strengthening the human resources available to perform the Department's functions.

52. In this context, efforts are being made to enhance the profile of the Department within the institutional hierarchy, given that the investigative divisions have yet to grant it full participation in cases involving indigenous peoples; also, at the institutional level, there is still a lack of awareness of the Department's existence, and its role is confused with that of other Government departments.

53. At the same time, there is a lack of awareness among judicial personnel regarding the special laws pertaining to [indigenous people involved in] criminal cases, as well as little outreach concerning the importance of this issue and the consequences for the Government in the event of non-compliance with or violation of those laws.

54. In order to mitigate these problems, a few specific actions have been incorporated into the 2010 Annual Operating Plan:

- Development of a training programme for public prosecutors and personnel of the Public Prosecutor's Office, the judicial system and the national police in order to enhance institutional capacity concerning issues relating to indigenous peoples
- Definition of operating criteria concerning the procedure to be followed at the outset of an investigation
- Development of guidelines for coordination between positive law and customary law
- Establishment of strategic alliances with the Ministry of Justice, the human rights division of the Supreme Court of Justice and the national police in order to facilitate indigenous peoples' access to the justice system in a manner suited to their social and anthropological characteristics
- Development of outreach materials in order to publicize the fundamental rights of indigenous peoples as well as the functions of the Ethnic Rights Department

E. Cases processed by the Public Prosecutor's Office during the period between 2008 and 2009 involving indigenous peoples

55. In the western region (Chaco region of Paraguay) there are district attorney's offices in the following departments: Boquerón, located in the city of Filadelfia, and Presidente Hayes, located in the cities of Pozo Colorado and Villa Hayes.

56. The cases processed between 2008 and 2009 included the following:

District attorney's office at Pozo Colorado (Presidente Hayes):

- A total of six incidents involving indigenous peoples, classified by the type of offence:
  - Two incidents of culpable homicide (both traffic accidents)
  - One case of suspected suicide
  - Two incidents of sexual coercion (both within indigenous communities)
  - One incident of livestock theft

District attorney's office at Villa Hayes (Presidente Hayes):

- A total of nine incidents involving indigenous peoples, classified by the type of crime:
  - One case of aggravated larceny
  - One case of culpable homicide

- One case involving attempted homicide
- Two cases of squatting
- One case of livestock theft
- One as-yet undefined case
- One case involving threats and damage
- One case involving injury

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VI. Response to question 7

57. In 2009, on the initiative of the Social Cabinet of the Office of the President of the Republic and the United Nations system in Paraguay, and with the support of indigenous organizations such as the coordinating body for the self-determination of indigenous peoples (CAPI), the Federation of Guarani community associations, the coordinating body for Chaco indigenous peoples and the network of private entities supporting the indigenous peoples of Paraguay, a series of seminars was organized with the aim of strengthening institutional capacity for the implementation of public policies aimed at indigenous peoples. The general objective was to strengthen and build institutional capacity in the State and civil society, in order to eliminate inequalities and the social exclusion of indigenous peoples, in accordance with domestic and international norms.

58. The objectives are:

(a) To establish a mechanism for assistance to indigenous peoples by public entities, with particular regard for the provisions of ILO Convention No. 169;

(b) To provide technical information on democracy, human rights and indigenous peoples to members of the various State and social groups which are involved in issues related to indigenous peoples;

(c) To promote social investment and democratic values from an intercultural perspective among members of the various State and social groups dealing with indigenous peoples.

59. The training, which covered subjects ranging from the preparation of meetings to the development of the final module, was well attended by State actors and prominent representatives of civil society. It also afforded opportunities for participants to forge alliances, gain a deeper understanding of the rights of indigenous peoples, and establish strategies for the exercise of these rights.

A. Training plan

60. The Supreme Court of Justice, through the human rights division, has established a training plan for judicial personnel, in strategic alliance with the non-governmental organization CAPI, that is being implemented progressively in the various judicial districts as resources become available, and in keeping with the timetable established with CAPI.

61. The plan was designed primarily for judicial personnel: appellate court officials, lower court judges, clerks and stenographers, justices of the peace, defence lawyers and prosecutors. It is also offered to leaders of local indigenous organizations, who, in the sessions which have taken place, considered their participation in a forum from which they had traditionally been excluded a historical event.

62. The plan includes segments on doctrinal principles concerning indigenous peoples, human rights and national and international legislation. The main objective is to promote the integration of a human rights perspective into judicial proceedings related to indigenous peoples, in both the civil and the criminal arenas, thereby fostering the recognition of cultural diversity. The training plan encompasses cultural identities and human rights, national indigenous legislation, indigenous rights in international law, and the State and indigenous law.

63. The team of specialized trainers is made up of major civil society actors, with the notable presence of judges and experts who have the necessary training to be able to contribute their knowledge and experience to the project (the methodology and programme are described in annex I).

Results achieved:

- Training of 204 judicial personnel, judicial facilitators, indigenous leaders and other social actors of three judicial districts (Amambay, Concepción and Alto Paraná)
- Development of a participatory and innovative methodology applied from the outset of the project, beginning with the preparation of the publication *Derecho Indígena y Derechos Humanos en Paraguay* (Indigenous Law and Human Rights in Paraguay) with representatives of CAPI and independent experts, under the coordination of the Supreme Court of Justice through its human rights division. The dynamics of the three meetings held helped bring the perspective of indigenous peoples to the fore, through their representatives, who had an opportunity at the start of each activity to present an overview of the situation in their communities, with special emphasis on the administration of justice
- Promotion of discussion and consensus-building forums, leading to agreements on the application of the special procedures established in national and international legislation
- Use of the Guaraní language in both the facilitators' presentations and the participants' interventions, thus giving due importance to our native language
- Exchange of experiences among magistrates in the application of norms for indigenous peoples

B. Publications

64. The publication *Derecho Indígena y Derechos Humanos* (Indigenous Law and Human Rights) contains the training plan and is the basis for the implementation of the plan by judicial personnel. A report was also published, entitled *Audencia pública "pueblos indígenas y poder judicial"* (public hearing on indigenous peoples

and the judiciary), with an accompanying CD-ROM containing a summary, cases, etc.

C. Strategic alliances

65. The human rights division is constantly undertaking activities to forge strategic alliances with both State institutions and civil society organizations. In that regard, in addition to the above-mentioned alliance with CAPI, a coordinated activity is planned for 2010 with INDI and other public bodies and non-governmental organizations. The Tierra Viva organization has also helped carry out specific activities to promote the rights of indigenous peoples.

D. Activities for dissemination, promotion and exchanges with civil society

66. Public hearing on the judiciary and indigenous peoples: In 2009, the first public hearing on the judiciary and indigenous peoples was held within the framework of the cooperation agreement between the human rights division of the Supreme Court of Justice and the Centre for Judicial Studies. A judge of the Supreme Court of Justice supported and participated in this public hearing with a presentation on the subject of indigenous peoples. Experts from civil society were also present. At the end of the event, the report *audencia pública "pueblos indígenas y poder judicial"* (Public hearing on the judiciary and indigenous peoples) was circulated.

67. Third Latin American Meeting of Local Governments in Indigenous Territories, "Tekohâre", with the participation of governors, municipal mayors and indigenous authorities. It is important to note that the human rights division promotes the active participation of judicial personnel. To this end, it arranged for Mr. José Valiente, a criminal court judge from Garantía, and Mr. Jorge Servín, an expert in indigenous affairs from the judiciary, to attend the meeting as presenters, and also arranged for its technical experts to serve as moderators of the six discussion forums.

68. Organization of "Human Rights Week" in 2007 and 2008, with a special day for the rights of indigenous peoples in December 2009. This activity took place within the judiciary. The organizers used alternative methods to spread the message about human rights, such as music, theatre and book launches. The goal was to sensitize judicial personnel to the importance and responsibility of their role as guarantors of human rights.

VII. Response to question 8

69. Both INDI and the United Nations system are engaged in the dissemination of the Declaration, which has become the paradigm that sets out the path for actions through which the demands of indigenous peoples can be expressed.

70. A printed version of the Declaration was presented at the intercontinental meeting of indigenous peoples that took place in Asunción in November 2009. The document was unique in that it was printed in both Spanish and Guarani, with an

informative glossary of key words written in Guarani. The publication bears the United Nations logo.

71. Representatives of public and private entities took part in the presentation and the document was distributed extensively in order to reach as many organizations as possible in Paraguay.

72. INDI plans to organize staff training workshops in 2010 on the United Nations Declaration to enable its staff to perform their role of publicizing and promoting the application of the Declaration.

73. In August 2008, the National Secretariat for Children and Adolescents (SNNA) initiated a process of outreach to indigenous children and adolescents, families and communities of the eastern and western regions. On 16 August, SNNA chaired the first meeting of children and adolescents of indigenous areas, rural inhabitants and urban dwellers, at which a sectoral analysis was made of the current situation of children and adolescents; a march took place along Avenida Mcal. Lopez to the residence of the President of the Republic, to whom a joint document was delivered. The participants joined the President in celebrating the first Government Day and Meeting with Presidents, along with the President of the Bolivarian Republic of Venezuela. The first Aty Guasu (major meeting) with indigenous peoples of urban settlements of the metropolitan area of Asunción was held in September 2009. During the meeting, a situational diagnosis was carried out with children, adolescents and parents of the various settlements and groups of street people.

74. An inter-agency committee for comprehensive care for indigenous street children, adolescents and families was set up with experts in indigenous affairs from the Department of Indigenous School Education (DGEEI) of the Ministry of Education and Culture, INDI, the Department for Vulnerable Groups (DGAGV) of the Ministry of Public Health and Social Welfare, and the Programme for street children adolescents (PAINAC) of SNNA. This led to the establishment of a forum for discussion and action through which participating institutions initiated a process for the recognition of the living conditions of indigenous urban populations.

75. In October 2008 a team of indigenous teachers was formed within the framework PAINAC with financing from the Yacyreta binational entity under an agreement with SNNA and ALDEAS SOS. Through this programme, and in conjunction with DGEEI, INDI and DGAGV, assistance is provided to a group of 72 indigenous children and adolescents and 6 families exposed to substance abuse and to sexual and labour exploitation on the street, primarily in the km12 zone of Luque. Indigenous children, adolescents and families are assisted with nutritional and health problems in health centres; medical care in the street and in urban settlements is coordinated with DGAGV under a schedule of visits. Groups of Mbyá Guarani children, adolescents and families, at their request, receive services in their original communities in the departments of Caazapá, Caaguazú, Guirá and San Pedro.

76. Through street outreach to Mbyá Guarani and Avá Guarani children, adolescents and families, the process of integration into urban indigenous settlements in the metropolitan area of Asunción is begun; this intervention focuses on the Cerro Poty de Cateura (Asunción) settlement. At present the team of teachers consists of two indigenous teachers from the Mbyá Guarani and Avá Guarani communities. The first census of the community was carried out by and at the request of community leaders and representatives, resulting in the finding that 81

out of 92 children and adolescents were engaged in various types of street activities (street performances, sale of handicrafts, begging).

77. In January 2009, community outreach in Cerro Poty was expanded to include participation workshops for children and adolescents, weekly community cinema sessions, and medical care provided in conjunction with DGAGV and the Department for Children and Adolescents of the Ministry of Public Health and Social Welfare.

78. Through PAINAC, in conjunction with the participation department and the communications department, an intensive audiovisual production course was organized with indigenous and street children and adolescents; two short films were produced: *La Calle: buscando nuevos caminos* ("The Street: seeking new directions") and *Ore Avei Paraguayo*. These short films were entered in the Latin American street cinema contest held in Rio de Janeiro, Brazil, and placed among the 10 best films.

79. In February, March and April 2009, the PAINAC team carried out emergency activities with children and adolescents who, along with their parents, had travelled from the interior of the country for the Indigenous Congress convened by the Government to elect the officers of INDI; the Ministry of Education and Culture provided food and diapers for children and adolescents, and group censuses were conducted in locations including Remansito Villa Hayes, Stella Maris de Ita Enramada college and San Luis de Asunción college. At the same time, outreach continued to a group of street children and adolescents in the km12 zone of Luque, and a complaint was filed with criminal court No. 3 at Luque against adults who were exposing children and adolescents to the consumption and marketing of the inhalant *cola de zapatero*, sexual and labour exploitation, and various types of physical maltreatment; the complaint was referred to the Ethnic Rights Office of the Public Prosecutor's Office.

80. In March 2009, in the Cerro Poty community, the Tekove Porã women's committee was established, consisting of indigenous mothers who work on the street; they transmitted to the SNNA Minister a request for support for the food security of their families and a commitment not to expose their children to the hardships of the street. Under a subsequent agreement between the women's committee and SNNA, the Jahupi Mbarete component was established and planning of a community kitchen was undertaken with the participation of the mothers, followed by the community kitchen in Cerro Poty, in April.

81. Assistance was provided for indigenous women in Plaza Uruguaya, Plaza Italia and the INDI building on Don Bosco street through the provision of meals for 280 children and adolescents for over a month, and protective measures were proposed to leaders and parents in the form of a shelter in an army building and the subsequent filing of a complaint with the Public Prosecutor's Office and the children's and adolescents' court for exposing children and adolescents to risks.

82. After five months of systematic assistance by teachers from the Unit for indigenous children and adolescents (UANAI) to 60 indigenous children and adolescents and five families from the km12 zone of Luque, the group was disbanded because of the adults' fear of being reported for exposing the children and adolescents to cold weather, substance abuse, and sexual and labour exploitation, and because of the death on site of Belensi Galeano, aged 14 months, from

respiratory problems, which occurred on 12 July. Criminal court No. 3 of Luque did not take action at any time on the incident reported months earlier.

83. In the process of outreach to street populations and to the communities of origin, contact was made with members of various indigenous peoples and urban settlements; through mapping and the collection of data and information, 15 indigenous urban groups, settlements and communities were identified with approximately 500 families and a total of 3,500 people.

84. In Asunción the following settlements were identified: Cerro Poty — Avá Guarani and Mbyá Guarani; Ramal La Católica — Avá Guarani; Cerro Guy — Toba Qom and Avá Guarani; Cateura 1 — Mbyá Guarani and Avá Guarani; Cateura 2 — Mbya Guarani and Avá Guarani; Viñas Cue — Chamacoco; Terminal Casa Calle 5 — Mbya Guarani and Avá Guarani; Terminal Alquiler 1 — Mbyá Guarani and Avá Guarani.

85. In Luque, the indigenous inhabitants are settled in Tarumandymi — Mbyá Guarani; Marin Kaaguy — Chamacoco; Comunidad Centro Nueva Esperanza (ex API) — Nivacle, Toba Qom, Ishirt, Tomaraho, Avá Guarani and Mbyá Guarani; Laurelty — Chamacoco, Aché and Avá Guarani; Tapyi Ha'eño — Mbyá Guarani.

86. In Mariano Roque Alonso, la Comunidad Maka — Maka, and in Fernando de la Mora, the Tapyi'i settlement — Mbya Guarani.

87. In all these settlements assistance was provided to 205 families during the last seven months of 2009. By December 2009 the number of families had increased, reaching a total of 230 family units.

88. With regard to the strengthening of culture, coordination was effected with the Ministry of Culture in providing support and assistance to craftspeople from these urban settlements and a network of indigenous craftspeople was established, consisting of representatives of various indigenous peoples, who have participated in various craft fairs and also in a number of national exhibitions.

89. Through the participation department, in conjunction with UANAI, a territorial social and support programme was developed and links were established with various indigenous communities, including urban settlements and communities of the eastern and western areas.

90. In Cerro Poty support was provided to 18 craftspeople through the provision of tools donated by the Organization of Ibero-American States; this contribution was very important because it enabled parents to increase their incomes.

91. On 11 October a Day for indigenous dignity was celebrated with the first meeting of urban indigenous people from the metropolitan area of Asunción, organized with inhabitants from various indigenous settlements, SNNA, INDI, the Ministry of Social Welfare and the Ministry of Education and Culture. A festival of cultural activities was held, with dances, songs, religious rituals, typical food and the exhibition and sale of handicrafts. This event created visibility for various indigenous peoples who live in the urban area of greater Asunción.

92. Itakyry, Yaká and Aguae are the Avá Guarani and Mbyá Guarani communities affected by fumigation with agrotoxins. SNNA supported and visited each community to learn more about the problems. In consultation with the inhabitants, complaints were made to the environmental court of Curuguaty Canindeyu, in the

case of Aguae; in Alto Paraná, in the case of Itakyry, joint interventions were undertaken with other agencies; and in the case of Yakâ Marangatu, an inter-agency committee was set up to investigate the situation in the community.

93. Street outreach was increased following the mass influx of Mbyá Guarani family groups and clans from the departments of Caaguazú, Guaira, Canindeyu, San Pedro and Caazapa. At the request of families, community leaders and other relatives, these groups were assisted on their return to their original communities by the provision of food hampers.

94. In December 2009 Aty Ñemongetara was held with 130 children and adolescents and adult community representatives of people living in the metropolitan area of Asunción and the eastern and western regions. At this event, a review of the conditions in which indigenous children and adolescents are living in the various territories of Paraguay was carried out and action plans were established relating to participation, food security and access to water, education, health and economic support for families, and services such as roads and communications, among other aspects; these will form part of the SNNA National Plan of Action for 2009-2013.

Annex I

Summary of the plan for the training of judges in indigenous law and human rights

Methodology

Target group:

Judges and judicial personnel

Presenters:

- An expert in doctrine (human rights) and indigenous law
- A trained technician to moderate group activities (lecture session, group work on case studies)
- A foreign expert at certain sessions or at a later date

Materials:

- Provision of documentation and technical and analytical reports to participants for preparatory reading and analysis

Duration of the plan:

- At least two workshops of four hours each

Certification:

- Participants will receive a certificate issued by the human rights division

I. **Description:**

Activities for the analysis of principles relating to indigenous peoples — national legislation and international human rights instruments.

II. **General objective of the plan:**

Application of a human rights perspective to proceedings (civil and criminal) involving indigenous people, promoting recognition of cultural diversity and linkage with international human rights instruments.

III. **Specific objectives:**

- Analyse the relationship between human rights and indigenous rights
- Place indigenous law within the perspective of the development of human rights
- Understand the relationship between law and cultural diversity
- Become familiar with the basic content of current indigenous law
- Review the treatment of indigenous people in international law and the systems for the international protection of the rights of indigenous people
- Apply national and international jurisprudence in the administration of justice

IV. Content:

Unit I. Cultural identity and human rights

1. Treatment of minorities by the State: assimilation, integration and diversity
2. Related concepts (ethnicity, nation, State, population, people, territoriality, territory)
3. Human rights and indigenous law

Unit II. Current indigenous legislation

1. National constitution and indigenous peoples
2. Indigenous customary law; legal concept and applicability
3. Analysis of existing indigenous legislation: Act No. 904 and other regulatory instruments
4. Special legal procedure

Unit III. Indigenous rights in international law

1. Indigenous rights in the United Nations system
2. Indigenous rights in the Inter-American system — Jurisprudence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights

Unit IV. The State and indigenous law

1. Tensions between human rights and indigenous rights: case studies
2. Expertise, technical advice
3. Article 438; preventive measures of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights; enforcement

V. Methodology and implementation:

- Intensive workshop with specialists and preparatory reading
- National and international case studies
- Participation in workshops for discussions and exchange of experience
- Talks by invited speakers

VI. Evaluation and certification:

A final evaluation session with speakers, organizers and participants. The Supreme Court of Justice will award certificates to those who have completed the requisite number of hours.